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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>ALMA FELIX, Individually and On Behalf of All Others Similarly Situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>GOLDMAN SACHS GROUP INC. and MORGAN STANLEY,</p> <p>Defendants.</p>	<p>CASE No.: 1:21-cv-10286-PAC-SLC</p> <p>MEMORANDUM OF LAW IN SUPPORT OF MOTION OF ANGEL YOUNG TO: (1) CONSOLIDATE RELATED ACTIONS; (2) APPOINT LEAD PLAINTIFF; AND (3) APPROVE LEAD PLAINTIFF'S SELECTION OF COUNSEL</p> <p><u>CLASS ACTION</u></p>
<p>SU YAN, Individually and On Behalf of All Others Similarly Situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>GOLDMAN SACHS GROUP INC. and MORGAN STANLEY,</p> <p>Defendants.</p>	<p>CASE No.: 1:21-cv-10999-PAC-SLC</p> <p><u>CLASS ACTION</u></p>

Movant Angel Young (“Movant”) respectfully submits this memorandum of law in support of her motion for an Order, pursuant to Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”):

(a) consolidating the related actions as they involve common questions of law and fact, and consolidation would promote judicial economy;

(b) appointing Movant as Lead Plaintiff for the class of investors who purchased or otherwise acquired shares of iQIYI, Inc. (“iQIYI” or the “Company”) contemporaneously with Defendants’ unlawful trades from March 22, 2021 through and including March 29, 2021 (the “Class Period”); and

(a) approving Movant’s selection of The Rosen Law Firm, P.A. (“Rosen Law”) as Lead Counsel for the Class.

INTRODUCTION AND BACKGROUND

This action was commenced on December 2, 2021 against Goldman Sachs Group Inc. and Morgan Stanley for violations under the Exchange Act. That same day, an early notice pursuant to the PSLRA was published advising class members of, *inter alia*, the allegations and claims in the complaint, the Class Period, and of their option to seek appointment as Lead Plaintiff. *See* Ex. 1 hereto. On December 22, 2021, the related action, *Yan v. Goldman Sachs Group Inc. and Morgan Stanley*, Case No. 1:21-cv-10999-PAC, was filed alleging substantially similar claims under the Exchange Act against the same defendants covering the same Class Period.

This securities class action arises from the unlawful use of material non-public information by Defendants Goldman Sachs and Morgan Stanley, who avoided billions in losses by selling iQIYI stock after confidentially learning that Archegos Capital Management

(“Archegos”), a family office with \$10 billion under management, failed (or was likely to fail) to meet a margin call, requiring a full liquidation of its position in the Company.

Archegos relied on swaps—whereby the underlying securities (shares or ADSs) are held by banks that broker the investments. This investment strategy began backfiring in March 2021, as the stock price of companies in which Archegos had significant exposure began to sell off, including Baidu, Inc., which saw its ADSs drop in value more than 20% from its February highs, and Farfetch Limited shares, which experienced a 15% decline.

But it was a March 23, 2021 announcement by ViacomCBS that ultimately swept out the rug from under Archegos. On that day, in what was perceived to be an effort to take advantage of its meteoric stock price rally, ViacomCBS announced a new \$3 billion offering to fund investments in its streaming service. According to later reports citing people familiar with the matter, this announcement put significant stress on Archegos, since news of the deal sparked a slide in ViacomCBS share price, adding to Archegos’s mounting losses. On March 24, 2021, ViacomCBS priced that offering—making 20 million shares of its Class B common stock available at \$85 a share and 10 million shares of its 5.75% mandatory convertible preferred stock available at \$100 a share.

Unfortunately, not all were convinced that ViacomCBS deserved such a lofty valuation. For example, on March 25, 2021, one of Wall Street’s most influential research firms, MoffettNathanson, published a report questioning the company’s value, downgrading the stock to a “sell,” and setting a price target of only \$55 per share. “We never, ever thought we would see Viacom[CBS] trading close to \$100 per share,” read the report, which was written by Michael Nathanson, a co-founder of the firm. “Obviously, neither did ViacomCBS’s management,” it continued, citing the new stock offering. In the wake of that report, ViacomCBS’s stock cratered, losing more than half its value in less than a week.

Indeed, by the close of trading on Friday, March 26, 2021, ViacomCBS was worth only \$48 per share.

This proved to be extremely problematic for Archegos, which had traded ViacomCBS on margin. Because Archegos had to maintain a certain amount of collateral to satisfy its lenders, and since the value of ViacomCBS stock drastically declined, Archegos needed enough collateral to cover, or else a margin call—where the lender can force a sell-off of the stock to bring the investor back into compliance with margin requirements—could be triggered. On March 27, 2021, it was reported that Archegos failed to cover and, as a result, had to liquidate more than \$20 billion of its leveraged equity positions.

According to media reports, Morgan Stanley sold about \$5 billion in securities of Archegos' doomed bets late Thursday, March 25, before the Archegos story reached the public. According to subsequent media reports, Defendants unloaded large block trades consisting of securities of Archegos' doomed bets, including billions worth of iQIYI securities, before the Archegos story reached the public, sending iQIYI's stock into a complete tailspin. Defendants knew, or were reckless in not knowing, that they were prohibited from trading based on this confidential market-moving information, but traded anyway, disposing their iQIYI stock before the news about Archegos was announced and iQIYI's shares plummeted.

As a result of these sales, which were made with confidential, inside information, including that iQIYI was among the few securities Archegos had to liquidate, Defendants Goldman Sachs and Morgan Stanley avoided billions in losses combined. As a result, Movant and the Class have been damaged from Defendants' violations of U.S. securities laws.

ARGUMENT

I. THE RELATED ACTIONS SHOULD BE CONSOLIDATED

Consolidation of related cases is proper where, as here, the actions involve common questions of law and fact such that consolidation would prevent unnecessary cost or delay in adjudication. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all of the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Fed. R. Civ. P. 42(a).

The PSLRA contemplates consolidation where “more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed.” 15 U.S.C. § 78u-4(a)(3)(A)(ii). As such, the PSLRA does not displace the traditional legal standards for consolidation under Fed. R. Civ. P. 42(a).

Both of the above-captioned related actions have been filed in this District alleging similar factual and legal grounds to support allegations of violations of the Exchange Act by Defendants arising from their unlawful use of material non-public information. Accordingly, the above-captioned cases should be consolidated pursuant to Fed. R. Civ. P. 42(a) for all purposes.

II. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF

The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to a published notice of class action by the later of: (i) 90 days after the date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA provides a “rebuttable presumption” that the “most adequate plaintiff” to serve as lead plaintiff is the person or group that:

(aa) has either filed the complaint or made a motion in response to a notice...;

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii).

As set forth below, Movant satisfies all three of these criteria, and thus is entitled to the presumption of being the “most adequate plaintiff” for the Class.

A. Movant Is Willing to Serve as Class Representative

Movant has filed herewith a PSLRA certification attesting that she is willing to serve as representative of the class and remains willing to provide testimony at deposition and trial, if necessary. *See* Ex. 2 hereto. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

B. Movant Has the Largest Financial Interest in the Action

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff ... is the person or group of persons that ... has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). “While the PSLRA does not specify how we should decide which plaintiff group has the ‘largest financial interest’ in the relief sought, most courts simply determine which potential lead plaintiff has suffered the greatest total losses.” *Takara Trust v. Molex*, 229 F.R.D. 577, 579 (N.D. Ill. 2005). Of the *Lax/Olsten*-styled¹ factors in determining the largest financial interest, the financial loss is the most significant factor. *See In re Fuwei Films Sec. Litig.*, 247 F.R.D. 432, 437 (S.D.N.Y. 2008). Indeed, “the best yardstick by

¹ *Lax v. Merch. Acceptance Corp.*, 1997 WL 461036 *5 (N.D. Ill. Aug. 11, 1997); *In re Olsten Corp. Sec. Litig.*, 3 F.Supp.2d 286, 295 (E.D.N.Y. 1998).

which to judge ‘largest financial interest’ is the amount of loss, period.” *In re Bally Total Fitness, Sec. Litig.*, 2005 WL 627960 * 4 (N.D. Ill. Mar. 15, 2005).

Movant lost approximately \$9,036.77 in connection with purchases of iQIYI securities made contemporaneously with Defendants’ sales of iQIYI securities. *See* Ex. 3 hereto. Movant is not aware of any other movant that has suffered greater losses in iQIYI securities during the Class Period. Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the class.

C. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In making its determination that the Lead Plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification – a *prima facie* showing that Movant will satisfy the requirements of Rule 23 is sufficient. *Fuwei Films*, 247 F.R.D. at 439 (only a *prima facie* showing is required). Moreover, “typicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *In re Oxford Health Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998).

1. Movant's Claims are Typical

The Rule 23(a) typicality requirement is satisfied when a plaintiff's claims arise from the same event, practice, or course of conduct that gives rise to other class members' claims and plaintiff's claims are based on the same legal theory. *See In re Livent, Inc. Noteholders Sec. Litig.*, 210 F.R.D. 512, 516 (S.D.N.Y. 2002). Rule 23 does not require the lead plaintiff to be identically situated with all class members. *Id.*

Here, Movant's claims are typical of the claims asserted by the Class. Movant, like all members of the Class, alleges that Defendants violated the Exchange Act by trading while in possession of material non-public information. Movant's interests are closely aligned with the other Class members' and Movant's interests are, therefore, typical of the other members of the Class.

2. Movant Is Adequate

The adequacy of representation of Rule 23 is satisfied where it is established that a representative party has the ability to represent the claims of the class vigorously, has obtained adequate counsel, and there is no conflict between a potential representative's claim and those asserted on behalf of the class. *In re Cendant Corp. Litigation*, 264 F.3d. 201, 265 (3d Cir. 2001).

Here, Movant has communicated with competent, experienced counsel concerning this case and made this motion to be appointed as Lead Plaintiff. Movant is not aware that any conflict exists between her claims and those asserted on behalf of the Class. Movant also sustained substantial financial losses from investments in iQIYI securities and is therefore extremely motivated to pursue claims in this action.

D. Movant Is Presumptively the Most Adequate Plaintiff

The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only upon proof “by a purported member of the Plaintiffs’ class” that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

The ability of Movant to represent the Class fairly and adequately is discussed above. Movant is not aware of any unique defenses Defendants could raise against her that would render Movant inadequate to represent the Class. Movant lives in California and has 20 years of investing experience. She has a bachelor’s degree and works as a supply chain manager.

The presumption that Movant is the most adequate Lead Plaintiff is not, therefore, subject to rebuttal. Accordingly, Movant has suffered financial losses and has the largest financial interest in this case of any timely lead plaintiff and should be appointed Lead Plaintiff.

III. MOVANT’S SELECTION OF COUNSEL SHOULD BE APPROVED

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with Lead Plaintiff’s selection when necessary “to protect the interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

Movant has selected Rosen Law as Lead Counsel. The firm has been actively researching Movant’s and Class Plaintiffs’ claims, as well as reviewing publicly available financial and other documents while gathering information in support of the claims against Defendants. Furthermore, the firm has an extensive history bringing significant recoveries to investors and is

experienced in the area of securities litigation and class actions, having been appointed as lead counsel in securities class actions in this District and in other courts throughout the nation. *See* Ex. 4 hereto. The firm has prosecuted numerous securities fraud class actions and other complex litigation and obtained substantial recoveries on behalf of investors.

As a result of the firm's experience in litigation involving issues similar to those raised in this action, Movant's counsel has the skill and knowledge to prosecute this action effectively and expeditiously. Thus, the Court may be assured that by approving Movant's selection of Lead Counsel, the members of the class will receive the best legal representation available.

CONCLUSION

For the foregoing reasons, Movant respectfully requests the Court issue an Order; (1) consolidating the related actions; (2) appointing Movant as Lead Plaintiff of the Class; (3) approving Movant's selection of The Rosen Law Firm, P.A. as Lead Counsel; and (4) granting such other relief as the Court may deem to be just and proper.

Dated: January 31, 2022

Respectfully submitted,

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/s/ Phillip Kim

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*[Proposed] Lead Counsel for Lead Plaintiff
and Class*

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2022, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/Phillip Kim